



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201143031

AUG 5 2011

U.I.L. 408.03-00

T:EP: RA: T3

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XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

Legend:

Individual A = XXXXXXXXXXXXXXXXXXXXX
Taxpayer B = XXXXXXXXXXXXXXXXXXXXX
IRA X = XXXXXXXXXXXXXXXXXXXXX

Amount D = XXXXXXXXXXXXXXXXXXXXX
Credit Union B = XXXXXXXXXXXXXXXXXXXXX
Company C = XXXXXXXXXXXXXXXXXXXXX
Date 1 = XXXXXXXXXXXXXXXXXXXXX
Date 2 = XXXXXXXXXXXXXXXXXXXXX
Date 3 = XXXXXXXXXXXXXXXXXXXXX

Dear XXXXXXXXX:

This is in response to your request dated March 30, 2011, as supplemented by correspondence dated May 09, 2011, June 09, 2011, and June 28, 2011, submitted on your behalf by your wife (Individual A) in which you request a waiver of the 60 day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalties of perjury in support of your request.

Taxpayer B, age 78, received a distribution from IRA X totaling Amount D. Taxpayer B asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to his diminishing mental capacity which affected his ability to understand and handle his financial transactions.

Taxpayer B maintained IRA X with Company C. On Date 1, Taxpayer B withdrew Amount D from IRA X and on Date 2 deposited it with Credit Union B. Taxpayer B represents that he has limited memory retention and moderate dementia which caused problems with his judgment and that he did not understand the implications of the withdrawal. IRA X is in Taxpayer B's name and Individual A who generally assists Taxpayer B with his financial decisions was not aware that Taxpayer B made the withdrawal until Date 3. Documentation submitted supports the assertion that Taxpayer B suffers from loss of memory and impaired judgment and is not capable of making financial decisions. Amount D has not been used for any other purpose.

Based upon the above facts and representations, Taxpayer B requests a ruling that the Internal Revenue Service (the "Service") waive the 60 day rollover requirement with respect to Amount D.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if-

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual received the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not included in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R. B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including : (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted on behalf of Taxpayer B is consistent with the assertion that his failure to accomplish a timely rollover during the 60-day rollover period was due to his diminishing mental capacity which affected his ability to understand and handle his financial transactions.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA X. Taxpayer B is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D into a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount D will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

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No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you have any questions regarding this letter, please contact xxxxxxxxxxxxxxxx, SE:T:EP:RA:T3 at xxxxxxxxxxxxxx.

Sincerely yours,

for *Ada Perry*
Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
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